

CAAAC MEETING NOTES 2/24/09

Compiled by Oline Barta

ATTENDEES: Don Quander, *Holland and Hart, LP*, Dexter Busby, *Montana Refining Company*, Jim Parker, Mark Lambrecht and Ken Morrison, *PPL Montana*, Gail Abercrombie, *Devon Energy*, Don Allan, *WETA*, Greg Brown, *CHS*, Jason Boeckel, *Smurfit Stone*, Gary Forrester, *MDU*, Jeff Chaffee and Brandt Rodway, *Bison Engineering*. Conference phone attendees were: Kathy Dolan, *US EPA*, Ken Wangler, *MDU*, Clark Snyder, *Riverstone Health*, and Randall Richert, *ConocoPhillips*. DEQ attendees were: Bonnie Rouse, Eric Merchant, Dave Klemp, Chuck Homer, Vickie Walsh, Debbie Skibicki, Dave Aguirre, Dan Walsh, Hoby Rash, Deb Wolfe, Brandie Conway and Oline Barta. (In the following notes, names of CAAAC members asking questions will be bolded.)

I. INTRODUCTIONS AND WELCOME: At 10:05, Eric Merchant opened the meeting and welcomed the attendees. He asked that people introduce themselves. Dave Klemp also offered a welcome, noting that he believed it was very important for ARMB to communicate with permit holders about the processes involved. He said we would have time to address other issues after the agenda items. Eric introduced the first agenda item which would be addressed by Vickie Walsh.

II. SUMMARY OF AIR QUALITY-RELATED ACTIONS FROM 1/23/09 BER MEETING

Vickie Walsh updated the attendees on contested cases. SME still had three cases pending in active litigation: the PM2.5 issue, the CO2 issue and SME's appeal on the testing issue. She said that we were able to bring the Exxon Title V appeal to a close. The Thompson River Power case is still somewhat active determining whether that source was a PSD source under new source review. Vickie said that the Forest Service is appealing their application fee for their major open burning permit. Vickie asked for questions on any of these Board actions. No questions followed, so Eric introduced Deb Wolfe to talk about rule changes

Deb Wolfe reported on rule actions since the last CAAAC meeting. Final rules include ARM 17.8.308 (agricultural exemption), 17.8.744 (revision to minor source permitting rules to conform with the agricultural exemption), 17.8.504 and 17.8.1205 (harmonizing requirements as a result of Title V and minor source conformation action). The Department is currently in the middle of a pending rule revision to exempt 40 CFR Part 60, Subpart HHHH (clean air mercury rule) from the incorporation by reference in the Montana Rules. The federal court vacated the mercury rule, but the mercury rule was still incorporated in Montana's rules. The Department is seeking to obtain Board action on this rule at the March 27, 2009, BER meeting. The Department intends to initiate the current-year IBR rulemaking in May of this year. She asked for questions and **Jim Parker** asked if the Board received any comments in opposition to HHHH action. She replied that no comments were received.

Dave Klemp asked the facility representatives what issues they had with modifying permits regarding mercury compliance. **Jim Parker**, speaking for PPL Montana, said they had been apprehensive, but found two technologies using carbon that will meet the standards. He felt that the DEQ application process was very thorough and rigorous. They have been able to get monitors installed and certified, but they are not performing as expected. PPL is still learning the new technology. **Ken Wangler** spoke of MDU's experience. They are also going to an oxidizer-activated carbon injection system in their Sidney facility. That permit should go final tomorrow. They also have had challenges with monitoring and reporting given that Montana does not accept the electronic EDR reports. Some of the Part 75 reporting requirements have been troublesome for them to understand how to report. Calibrator certification has also been an issue. There seems to be no nationally recognized calibrator certification protocol that has been accepted by EPA. He also noted that the industry and the state face challenges by being out in front of national regulation. Dave Klemp thanked Mr. Parker and Mr. Wangler for their comments and said

that ARMB would like sit down with the facility folks to discuss permitting and compliance issues and possible interpretations of regulations.

Eric Merchant asked for other questions. **Don Allen** asked about electronic forms. Chuck Homer responded that in accordance with our Guidon process we are looking into electronic transmission of information. Permits are now being sent out electronically. Dave Klemp mentioned our Air Online decision package which was appropriated to set up electronic compliance reporting. Debbie Skibicki pointed out that the EPA reporting system was very complicated and tied to acid rain reporting. It is much different than what we are attempting to do. **Jason Boeckel** asked whether the mercury reporting system would be hourly, daily, or quarterly. Hoby Rash said the EPA data reporting system was very elaborate and tied to acid rain reporting. We don't need the same information as EPA requires. He said we are trying to define in our permits what information we need and what form the data needs to take in order to implement the mercury program. Hoby said that mercury reporting will probably be similar to other reporting for CEMs. This would mean quarterly reports. **Ken Wangler** concurred that the state shouldn't have to accept the elaborate EDR reports.

III. PROMPT DEVIATION REPORTING: Eric Merchant introduced Debbie Skibicki to discuss and explain the changes to the regulatory definition of prompt deviation reporting as applied in Title V permits. As background information, Debbie related how in April of 2008 an EPA review of Montana's Title V program indicated some changes EPA wanted made in permit language to avoid court issues. Montana's language for prompt deviation reporting might have been understood as semi-annual. She said some of the today's attendees had helped on a CAAAC conference call to create the new language. She had copies available. She explained that prior to the change a deviation either followed the malfunction rule or semi-annual reporting. Now, for deviations that have the potential to violate permit conditions, a fax or email is required within 24 hours of the discovery of the deviation and a follow-up report within 30 day of that discovery. For all other deviations, a report is required within 90 days of discovery. The first permit to contain this new language was issued for Plum Creek Ksanka Mill. Debbie also sent the new definition to EPA. We may get more comments as other permits go out she said.

Don Quander commented that he feels the Department has handled this situation well and avoided a potentially contentious situation. While the industry may remain skeptical that more reporting was needed, he feels they generally regard the new requirements as reasonable. Vickie Walsh replied that this was good to know and that DEQ sees this as part of a flexible learning process. She said we are considering providing an optional electronic form to make reporting easier. Debbie Skibicki said that the Department would check with industry to create a workable form. She also said she appreciated the help industry provided in this process. **Don Quander** commented that consensus is easier to build if everyone focuses on what information is needed and what it is used for. **Jim Parker** agreed with Don's comments and thought that a malfunction form would be very useful.

IV LEGISLATIVE UPDATE: Eric introduced Chuck Homer to talk about legislative issues. Chuck had a handout of the bills the Department was tracking. He said the bills fell into three general areas. The first was climate change – carbon issues which are being handled the Planning Prevention and Assistance Division and by Administration. We don't have a lot of input on those bills. We more closely tracking the other two categories: bills dealing with permit changes and MEPA changes. For the most part, the Department has been neutral on these bills. He mentioned some of these bills that have reached the second reading process: HB375 (to endorse the western climate initiative), HB483 (dealing with the appeals process) HB566 (MEPA changes), SB 440 (exempting air quality actions from MEPA review) and SB288 (dealing with the undertakings for challenges of energy development.) One bill we have just started tracking is HB526 which would prohibit the use of magnesium chloride on city, state or county roads. This may cause a problem on some county roads where it is now used for dust suppression in accordance with SIP requirements. Two carbon bills SB66 and SB180 have been tabled. SB387 revising

laws dealing with the Board of Environmental Review's permit appeals process has passed from the Senate to the House. SB453 would have required ambient air monitoring to assess impacts on honey bees, but did not pass. He mentioned there were a couple other administrative process or rule making issues the Department was watching.

Jim Parker asked the reason for HB526, prohibiting magnesium chloride on certain roads. Chuck thought it was a dislike for the corrosive effects of the salts. He thought it might create some PM10 issues especially in non-attainment areas.

Don Quander brought up SB481 (to exempt economic stimulus projects from MEPA.) The bill refers to exempting "projects funded by" federal economic stimulus money. Chuck Homer said that the DEQ was considering secondary impacts in Air Permitting for crushing, portable operations. He said we will try not to become a bottleneck in this process. Don also asked if DEQ has prepared a list of priorities for using any stimulus money that may become available. Dave Klemp responded that we were trying to make sure that our DEQ requirements do not become a bottleneck. He also said that some specific money has been earmarked for diesel emissions reduction. We are studying where and how it could be most effectively used.

Don Allen asked **Kathy Dolan** if EPA would be getting money that they could then pass on to the states for various programs. She replied that they were just now trying to figure what money will be coming in and where it is going. A large chunk of their allotment would go to drinking water facilities and wastewater treatment facilities. She did not know whether anything would go to states for programmatic work. She thought most money would be going to facilities. She said that money would be going through the state revolving fund and NEPA process. She said they were getting new information daily.

AIR RESOURCES MANAGEMENT BUREAU BUDGET

Chuck Homer talked about the current status of ARMB's budget. We had originally requested five decision packages. The request for leased vehicles was withdrawn. The request for an FTE for MACT failed. He said the student intern funding package (\$95,000), the online reporting (\$75,000) and the base adjustment (\$288,000) passed. The air regulatory assistance package also failed, but discussions are still going on trying to recover it at least in part. Chuck said we are now looking at \$100,000 instead of the \$250,000.

Don Quander asked what the air regulatory assistance package contained. Chuck answered that it was appropriated in the last session as one time only money for the Butte office setup and the new monitoring station at Sidney and some county program funding. This year, Chuck said that ARMB's still needs to fund air monitoring issues (Tongue and Powder River), development, county funding and supplies. Dave added that permitting and compliance activities at the county level was probably the largest expenditure. He said we need a reserve to be able to react quickly to unforeseen requests for ambient monitoring, etc. He said Montana has data gaps and that the data from the monitor in Sidney has been very helpful in providing air quality information. **Don Quander** thought it important that compliance can now be demonstrated in eastern Montana areas. Chuck Homer pointed out that these activities are fee supported and must be used for permitting and compliance activities. Don Quander said that industry had some concerns that their fees would be used to fund new monitoring of CO₂.

Discussion followed concerning the value of these CAAAC meetings and sharing information and concerns. **Don Allen** said he felt it was important to start early to discuss possibly contentious issues. He brought up the air fee issue saying that at the previous CAAAC meeting, information was provided that air fees would cost between \$36-\$40 per ton. Dave Klemp said the current figures show a \$1 increase in fees for every \$100,000 in the budget. The current per ton fee is \$37 without the air regulatory package.

Dexter Busby asked what would happen with monitoring stations if no air regulatory assistance package were passed. Dave Klemp replied that we were in the process of prioritizing our monitoring needs. Chuck Homer added that we would not be able to do all the monitoring that we do now.

Dave Klemp commented on the problem of assessing application fees for the State Budget Subcommittee. There was a concern that the existing facilities were subsidizing the new facilities. He said there was quite a bit of discretion as to how the funding is done and we are committed to talking about the funding strategies that we use for our program. He would like to have a work group dedicated to identifying fund allocation. **Don Quander** added that a fee increase from \$31 to \$37 per ton is a significant change. Chuck Homer said the Department has been talking about new ways of addressing the inequity on application fees while maintaining adequate operational funds. **Jim Parker** asked if a contingent funding agreement, at the time of application, to reimburse for appeals had been considered. Chuck Homer replied that a lot of states had a system where the application fee is reflective of the time and materials that were used to process it. He said that some argue that the facility is then not prepared for the large bill they may receive. Our old system had a problem with some facilities having a large fund balances. **Don Quander** commented that the MEPA process often involved more uncertainty problems than the permit process.

A discussion about the possible passing of the air regulatory assistance led Chuck Homer to comment that the best we expected was \$100,000 and not the entire \$250,000. **Don Quander** asked how DEQ would provide staff if we had some stimulus money and some new required projects. Chuck Homer and Dave Klemp said that discussions so far included ideas such as: reallocating people to the highest priority work agency-wide, which may involve ARMB staff working in other areas of expertise. **Don** said a concern was that regular duties may become secondary. He was assured that DEQ would still have to meet statutory time lines.

V. ADDITIONAL BUSINESS

Eric Merchant ended the formal agenda and moved the discussion on to other issues. **Don Quander** brought up a problem with “date-mailed” versus “date-received-by stamp” concerning compliance submittal requirements. Sometimes a report put in the mail before the required date is received after the date due, creating a deviation. He had been asked by other interested parties to suggest that ARMB change the “received by” to “date mailed” for documents requiring an original signature that can’t simply be e-mailed. **Don** added that these interested parties would prefer a deadline a day or two earlier if the mailing date could be used as the “submittal date.” Chuck Homer said that ARMB should have a policy to address that. Dan Walsh commented that there was some discrepancy between Federal programs, some specified “post mark” and others referred to “submitted by.” He said that from a practical standpoint it is problematic to save all envelopes given our limited storage area. The date stamp can not be separated from the document and lost like an envelope. Chuck Homer stated that the policy should be clear. **Dexter Busby** said he would like the issue to be addressed since MRC had experienced slow mail delivery problems. Debbie Skibicki had some concerns that permitting comment time frames could be affected by this issue. **Don Quander** told of a situation where a similar date stamp/post mark problem was solved by using a web site for uploading the document before you put it in the mail. It was pointed out that these compliance reports are often lengthy. Dave Klemp reminded attendees that we hope to be starting a process of electronic report acceptance.

Eric Merchant asked the group to consider when they would like the next meeting. The attendees agreed upon quarterly meetings. The next CAAAC meeting will be May 5, 2009 at 10:00 a.m. in Metcalf Room 111. Topics will include a legislative update and a budget update. Other items may be mailed to Eric Merchant at emerchant@mt.gov. The meeting ended at 11:35 a.m.